

**IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF VIRGINIA
NORFOLK DIVISION**

WILLIAM D. FOWLER,	:	
	:	
Plaintiff,	:	
	:	Civil Action No. 2:22cv504
v.	:	
	:	
KENNETH W. STOLLE,	:	
	:	
Defendant.	:	

FINAL PRETRIAL ORDER

In accordance with the Court's Federal Rule of Civil Procedure Rule 16(b) Order and the local rules of Court for the United States District Court for the Eastern District of Virginia relating to pretrial procedure, it is **ORDERED** that:

I. STIPULATED FACTS.

The parties hereto agree and stipulate to:

1. The Plaintiff is William D. Fowler, a former Deputy Sheriff of the Virginia Beach Sheriff's office.
2. The Defendant is Kenneth W. Stolle.
3. Sheriff Stolle ran as the Republican candidate and was first elected Sheriff of the City of Virginia Beach in November 2009. He was reelected in 2013, 2017 and 2021.
4. Plaintiff is married to Kelly Convirs-Fowler.
5. The Sheriff was aware that Plaintiff was married to Mrs. Fowler. Plaintiff was hired as a Deputy Sheriff in the Virginia Beach Sheriff's Office ("VBSO") by former Sheriff Paul Lanteigne in 2007.

6. Plaintiff was employed at the VBSO from March 1, 2007 to December 31, 2021.

7. Sheriff Stolle reappointed plaintiff when he took office in 2010, and reappointed plaintiff following his reelection in 2013 and 2017.

8. Plaintiff was promoted to Corporal in 2010.

9. In January of 2015, Plaintiff was promoted from Corporal to Sergeant and assigned to Corrections. He was transferred to the Intake/Release Dept. in February 2016.

10. On November 30, 2021, Sheriff Stolle verbally advised plaintiff that he would not be reappointed for the Sheriff's term starting in January 2022.

11. Plaintiff supervised five deputies as an Intake/Release Sergeant.

12. In January of 2010, Sheriff Stolle entered into a Memorandum of Understanding ("MOU") with the Virginia Beach Police Dept. ("VBPD"), on behalf of the City of Virginia Beach, whereby the VBPD utilizes VBSO deputies to assist with staffing, management and operation of the VBPD Second Police Precinct's Temporary Detention Facility. This MOU remained in place during Plaintiff's tenure.

II. LEGAL AND EVIDENTIARY STIPULATIONS

1. Jurisdiction and Venue are proper.

III. WITNESSES.

Neither party objects to the following witnesses:

1. Sgt. William David Fowler

2. Sheriff Kenneth Stolle

3. Del. Kelly Convirs-Fowler

4. Undersheriff Brian Struzzieri

5. Chief Deputy Victoria Thomson

6. Chief Deputy Rocky Holcomb

7. Capt. Alvie Culanding

8. Lt. Melissa Fleet

9. Melissa Keough

10. Capt. Kevin Hugo

11. HR Director Sherry White

12. Lt. Nicholas Curtis

13. Alicia Driscoll

14. HR Director Allison Brumley

A. The Plaintiff expects to present the following witnesses at trial (* denotes “may call”):

	Name	Address	Purpose	Objection
1.	Sgt. William David Fowler	c/o William R. Thetford, Jr., Esq. Simms Showers LLP 305 Harrison St SE 3 rd Floor Leesburg, VA 20175		
2.	Del. Kelly Convirs-Fowler	c/o William R. Thetford, Jr., Esq. Simms Showers LLP 305 Harrison St SE 3 rd Floor Leesburg, VA 20175		

3.	Sheriff Kenneth Stolle	c/o Jeff W. Rosen, Esq. Pender & Coward, PC 222 Central Park Avenue Suite 400 Virginia Beach, VA 23462		
4.	Undersheriff Brian Struzzieri*	c/o Jeff W. Rosen, Esq. Pender & Coward, PC 222 Central Park Avenue Suite 400 Virginia Beach, VA 23462		
5.	Chief Deputy Rocky Holcomb*	c/o Jeff W. Rosen, Esq. Pender & Coward, PC 222 Central Park Avenue Suite 400 Virginia Beach, VA 23462		
6.	Chief Deputy Victoria Thomson*	c/o Jeff W. Rosen, Esq. Pender & Coward, PC 222 Central Park Avenue Suite 400 Virginia Beach, VA 23462		
7.	Lt. Melissa Fleet*	c/o Jeff W. Rosen, Esq. Pender & Coward, PC 222 Central Park Avenue Suite 400 Virginia Beach, VA 23462		
8.	Capt. Alvie Culanding*	c/o Jeff W. Rosen, Esq. Pender & Coward, PC 222 Central Park Avenue Suite 400 Virginia Beach, VA 23462		
9.	Capt. Kevin Hugo*	c/o Jeff W. Rosen, Esq. Pender & Coward, PC 222 Central Park Avenue Suite 400 Virginia Beach, VA 23462		
10.	HR Director Sherry White*	c/o Jeff W. Rosen, Esq. Pender & Coward, PC 222 Central Park Avenue Suite 400 Virginia Beach, VA 23462		

11.	HR Director Allison Brumley*	c/o Jeff W. Rosen, Esq. Pender & Coward, PC 222 Central Park Avenue Suite 400 Virginia Beach, VA 23462		
12.	Rachel Foster *	4504 Marlwood Way Virginia Beach, VA 23462 757-362-4643		
13.	Lt. Nicholas Curtis*	c/o Jeff W. Rosen, Esq. Pender & Coward, PC 222 Central Park Avenue Suite 400 Virginia Beach, VA 23462		
14.	Deputy Brian Capps *	c/o William R. Thetford, Jr., Esq. Simms Showers LLP 305 Harrison St SE 3 rd Floor Leesburg, VA 20175		Objection. Not properly identified in discovery
15.	Capt. Henri “Rick” Norris	c/o William R. Thetford, Jr., Esq. Simms Showers LLP 305 Harrison St SE 3 rd Floor Leesburg, VA 20175		Objection. Not properly identified in discovery
16.	Sgt. Joseph Franz (ret) *	c/o William R. Thetford, Jr., Esq. Simms Showers LLP 305 Harrison St SE 3 rd Floor Leesburg, VA 20175		Objection. Not properly identified in discovery

The Plaintiff reserves the right to call any witnesses previously identified by the Defendant.

B. The Defendant expects to present the following witnesses at trial (* denotes “may call”):

	Name	Address	Purpose	Objection
1.	Sheriff Kenneth Stolle	c/o Jeff W. Rosen, Esq. Pender & Coward, PC 222 Central Park Avenue Suite 400 Virginia Beach, VA 23462		
2.	William D. Fowler	c/o William R. Thetford, Esq.		
3.	Brian Struzzieri	c/o Jeff W. Rosen, Esq. Pender & Coward, PC 222 Central Park Avenue Suite 400 Virginia Beach, VA 23462		
4.	Victoria Thomson	c/o Jeff W. Rosen, Esq. Pender & Coward, PC 222 Central Park Avenue Suite 400 Virginia Beach, VA 23462		
5.	Alvie Culanding	c/o Jeff W. Rosen, Esq. Pender & Coward, PC 222 Central Park Avenue Suite 400 Virginia Beach, VA 23462		
6.	Melissa Keough	c/o Jeff W. Rosen, Esq. Pender & Coward, PC 222 Central Park Avenue Suite 400 Virginia Beach, VA 23462		
7.	Kevin Hugo	c/o Jeff W. Rosen, Esq. Pender & Coward, PC 222 Central Park Avenue Suite 400 Virginia Beach, VA 23462		
8.	Rocky Holcomb *	c/o Jeff W. Rosen, Esq. Pender & Coward, PC 222 Central Park Avenue Suite 400 Virginia Beach, VA 23462		

9.	Nicholas Curtis *	c/o Jeff W. Rosen, Esq. Pender & Coward, PC 222 Central Park Avenue Suite 400 Virginia Beach, VA 23462		
10.	Alicia Driscoll *	c/o Jeff W. Rosen, Esq. Pender & Coward, PC 222 Central Park Avenue Suite 400 Virginia Beach, VA 23462		
11.	Sherry White *	c/o Jeff W. Rosen, Esq. Pender & Coward, PC 222 Central Park Avenue Suite 400 Virginia Beach, VA 23462		
12.	Kelly Convirs-Fowler *	c/o William R. Thetford, Jr., Esq. Simms Showers LLP 305 Harrison St SE 3 rd Floor Leesburg, VA 20175		
13.	Marjorie Smith, City Attorney *	Virginia Beach City Attorney's Office 2401 Courthouse Drive Bldg 1, Room 260 Virginia Beach, VA 23456		
14.	Shauna Buckley, * Recruitment Manager	Norfolk Sheriff's Office 140 East Street Norfolk, VA 23510		
15.	Sheriff Joe Baron *	Norfolk Sheriff's Office 140 East Street Norfolk, VA 23510		
16.	Allison Boyd, * Executive Assistant	Norfolk Sheriff's Office 140 East Street Norfolk, VA 23510		
17.	Kimberly Bean, * HR Specialist	Norfolk Sheriff's Office 140 East Street Norfolk, VA 23510		

The Defendant reserves the right to call any witnesses previously identified by the

Plaintiff.

IV. EXHIBITS

A. **Agreed Exhibits.** The parties hereto agree that the following exhibits may be introduced in evidence, by either party, without the necessity of further proof:

Exhibit Number	Identification	Description
1.	Stolle RFP 0412	12/28/21 Letter re: Non-Reappointment
2.	P 00105 Attachment B Recording	Audio from Non-Reappointment Meeting
3.	Stolle RFP 321-0324	Request for Transfer Email and attachment 01-10-19
4.	Kelly Fowler SDT 010-013	Text messages between Stolle and Convirs-Fowler
5.	Stolle RFP 0409-0412	Separation Notice
6.	Stolle RFP 0465-0482	VBSO Policy and Procedure General Order

B. **Plaintiffs' Exhibits:** The Plaintiff wishes to offer the following exhibits to which the Defendant objects:¹

Exhibit Number	Bates Stamp Number	Exhibit	Objection
1.		Defendant Stolle Deposition	Objection – Hearsay (FRE 801); Not Proper Exhibit for Trial.
2.		Recording of Termination	Objection – Hearsay (FRE 801).
3.	Stolle RFP 221-383	Employment Evaluations	No objection if proper foundation at trial.

¹ In addition to objections stated, and even if no objection is stated, the parties object to any identified exhibit not properly authenticated or otherwise lacking in foundation and reserve the right to challenge proffered authenticating witnesses and foundations at trial. The parties also reserve the right to introduce exhibits and present witnesses identified by the other party. The parties reserve the right to present appropriate demonstrative exhibits.

Exhibit Number	Bates Stamp Number	Exhibit	Objection
4.		Recording of Stolle Warning Plaintiff Not to Run for Office 3-30-18	Objection – Hearsay (FRE 801); Irrelevant (FRE 401, 402); Prejudice outweighs any probative value (FRE 403).
5.	Stolle RFP 0383-0397	Fowler Transfer Requests	Objection – Hearsay (FRE 801); Irrelevant (FRE 401, 402).
6.		Plaintiff Social Media Posts in Support of Del. Fowler and Political Positions	Objection – Hearsay (FRE 801); Irrelevant (FRE 401, 402); Prejudice outweighs any probative value (FRE 403); See Motion <i>in Limine</i> (Doc. 56, 57)
7.	Stolle RFP 321-324	Request for transfer to the Professional Standards Division	Objection – Hearsay (FRE 801); Irrelevant (FRE 401, 402)
8.	Stolle RFP 0413-0422	William Fowler Training Records	No objection if proper foundation at trial
9.		PBA Endorsement of Delegate Convirs-Fowler	Objection – Hearsay (FRE 801); Irrelevant (FRE 401, 402); Prejudice outweighs any probative value (FRE 403); Authenticity (FRE 1002)

Exhibit Number	Bates Stamp Number	Exhibit	Objection
10.		Stolle Endorsements of Del. Fowler Opponents	Objection – Hearsay (FRE 801); Irrelevant (FRE 401, 402); Prejudice outweighs any probative value (FRE 403); Lack of Foundation; Authenticity (FRE 1002)
11.		VBSO Policy and Procedure General Order	No objection if proper foundation at trial.
12.		Delegate Fowler 2019 Advertisement Stills	No objection if proper foundation at trial
13.	Kelly Fowler SDT 028	Del. Fowler 2019 Advertisement Video	Objection – Hearsay (FRE 801); Irrelevant (FRE 401, 402); Prejudice outweighs any probative value (FRE 403)
14.	Stolle RFP 0655-0673	Fowler Request re Panel and uniform in Ad 2021	No objection if proper foundation at trial
15.	Stolle RFP 0691	Del. Fowler 2021 Advertisement Video	Objection – Hearsay (FRE 801); Irrelevant (FRE 401, 402); Prejudice outweighs any probative value (FRE 403)
16.	Stolle RFP 0688-0689	Del. Fowler 2021 Advertisement Stills	No objection if proper foundation at trial

Exhibit Number	Bates Stamp Number	Exhibit	Objection
17.		Sheriff's Office Endorsement Ads	Objection – Hearsay (FRE 801); Irrelevant (FRE 401, 402); Prejudice outweighs any probative value (FRE 403); Lack of Foundation; Authenticity (FRE 1002); See Motion <i>in Limine</i> (Doc. 59, 60)
18.	Kelly Fowler SDT 010-012	Delegate Fowler and Stolle Texts	Objection – Irrelevant (FRE 401, 402); Prejudice outweighs any probative value (FRE 403)
19.		Sheriff Stolle Separation Notice	No objection
20.		Sheriff Stolle Social Media Posts re Fowler's Employment	Objection – Hearsay (FRE 801); Irrelevant (FRE 401, 402); Lack of Foundation; Prejudice outweighs any probative value (FRE 403); See Motion <i>in Limine</i> (Doc. 56, 57)
21.		Sheriff Stolle Facebook Post in Response to Civil Suit	Objection – Hearsay (FRE 801); Irrelevant (FRE 401, 402); Lack of Foundation; Prejudice outweighs any probative value (FRE 403); See Motion <i>in Limin</i> (Doc. 56, 57)
22.		Virginian Pilot: "Virginia Beach Sheriff Faces Lawsuit"	Objection – Hearsay (FRE 801); Irrelevant (FRE 401, 402); Prejudice outweighs any probative value (FRE 403); See Motion <i>in Limine</i> (Doc. 56, 57)

Exhibit Number	Bates Stamp Number	Exhibit	Objection
23.		Virginia Public Access Project – Donations by party	Objection – Hearsay (FRE 801); Irrelevant (FRE 401, 402); Prejudice outweighs any probative value (FRE 403); Authenticity (FRE 1002)
24.		William Fowler W2 2020 Redacted	Objection – Hearsay (FRE 801); See Motion <i>in Limine</i> (Doc. 62, 63)
25.		William Fowler W2 2021 Redacted	Objection – Hearsay (FRE 801); See Motion <i>in Limine</i> (Doc. 62, 63)
26.		Fowler Retirement Estimate – Before Termination	Objection – Hearsay (FRE 801)); Prejudice outweighs any probative value (FRE 403); Authenticity (FRE 1002); Lack of Foundation; Requires Expert Testimony; See Motion <i>in Limine</i> (Doc. 62, 63)
27.		Fowler Retirement Estimate – Post Termination	Objection – Hearsay (FRE 801)); Prejudice outweighs any probative value (FRE 403); Authenticity (FRE 1002); Lack of Foundation; Requires Expert Testimony; See Motion <i>in Limine</i> (Doc. 62, 63)

Exhibit Number	Bates Stamp Number	Exhibit	Objection
28.		Fowler retirement Estimate – Before Termination – Early Retire	Objection – Hearsay (FRE 801); Prejudice outweighs any probative value (FRE 403); Authenticity (FRE 1002); Lack of Foundation; Requires Expert Testimony; See Motion <i>in Limine</i> (Doc. 62, 63)
29.	Kelly Fowler SDT 001-009	Correspondence between Del. Fowler and VBSO	Objection – Hearsay (FRE 801); Irrelevant (FRE 401, 402); Prejudice outweighs any probative value (FRE 403)
30.	Stolle RFP 0273-0281	Positive Performance Commendations from Personnel Files	No objection if proper foundation at trial
31.	Fowler 0695-0697	Paid Time Off Balance Readjustments	Objection – Hearsay (FRE 801); Lack of Foundation; Requires Expert Testimony; See Motion <i>in Limine</i> (Doc. 62, 63)
32.	Stolle RFP 0591-0642	Investigation into Hostile Note Left on Plaintiff's Vehicle	Objection – Hearsay (FRE 801); Irrelevant (FRE 401, 402); Prejudice outweighs any probative value (FRE 403)
33.	Stolle RFP 0072	Statement Why Fowler Wanted to work for VBSO	Objection – Hearsay (FRE 801); Irrelevant (FRE 401, 402); Prejudice outweighs any probative value (FRE 403)
34.		Stolle Response to Plaintiff's Second Interrogatories and Request for Production	Objection – Hearsay (FRE 801); Not Proper Exhibit for Trial

Exhibit Number	Bates Stamp Number	Exhibit	Objection
35.		Stolle Supplemental Response to Plaintiff's Second Interrogatories and Request for Production	Objection – Hearsay (FRE 801); Not Proper Exhibit for Trial
36.	Stolle RFP 0685-0686	Correspondence regarding Out of State Protective Orders	Objection – Hearsay (FRE 801); Irrelevant (FRE 401, 402); Prejudice outweighs any probative value (FRE 403)
37.		Virginia Beach Sheriff Removed From State Mass Shooting Investigation	Objection – Hearsay (FRE 801); Irrelevant (FRE 401, 402); Prejudice outweighs any probative value (FRE 403); See Motion <i>in Limine</i> (Doc. 56, 57)
38.		Picture of Plaintiff and Defendant when Plaintiff Promoted to Sergeant	No objection if proper foundation at trial

The Plaintiff may use demonstrative exhibits.

C. **Defendant's Exhibits.** The Defendant wishes to offer the following exhibits to which the Plaintiff objects²:

Exhibit Number	Bates Stamp Number	Exhibit	Objection
1.	Stolle RFP 0016-0020	Job Description – Intake/Release Sergeant	Relevance, Confuses the issues, foundation
2.	Stolle RFP 0412	12/28/21	None
3.	P 00105 Attachment B Recording	Audio from Non-Reappointment	None
4.	Stolle RFP 0001	Organizational Chart	Relevance
5.	Stolle RFP 0021-0037	VBSO Policy No. 02-03-00: Rules/Regulations and Discipline	Relevance
WITHDRAWN	Kelly Fowler SDT 028	Video from Kelly Fowler Advertisement 2019 Gun Violence	Relevance
	Kelly Fowler Depo Exhibit 3B	Photograph from Kelly Fowler 2019 Advertisement (In Uniform)	Relevance
8.	Stolle RFP 0459-0484	Professional Standards Review October 2019	Hearsay; No personal knowledge; Relevance (portions of the exhibit describing unrelated disciplinary procedures); Red. R. Evid. 403

² In addition to objections stated, and even if no objection is stated, the parties object to any identified exhibit not properly authenticated or otherwise lacking in foundation and reserve the right to challenge proffered authenticating witnesses and foundations at trial. The parties also reserve the right to introduce exhibits and present witnesses identified by the other party. The parties reserve the right to present appropriate demonstrative exhibits.

Exhibit Number	Bates Stamp Number	Exhibit	Objection
9. WITHDRAWN	Stolle RFP 0691	Video from Kelly Fowler Advertisement 10/01/21 "Military Families"	Relevance, misleads the jury
10.	Fowler Depo Ex. 1	Screenshots from Kelly Fowler Advertisement 10/01/21	Best evidence, Relevancy, Cumulative
11.	Stolle RFP 0668	Email 09-01-2021	Completeness
12.	Stolle RFP 0655	Email 09-08-2021	Completeness
13.	Stolle RFP 670	Memorandum re: Speaker Panel and Uniform Request 09-07-21	Hearsay, Relevance Fed. R. Evid 403
14.	Stolle RFP 0646	Memorandum 01-12-21	Hearsay Relevance No Personal Knowledge Fed. R. Evid 403
15.	Stolle RFP 0516-0532	Professional Standards Review December 2012	Fed. R. Evid 403, Relevance Hearsay
16.	Stolle RFP 0679	Email 11-21-19	Hearsay, No personal knowledge, Fed. R. Evid 403
17.	Stolle RFP 0579-0590	Professional Standards Review December 2019	Hearsay, Fed. R. Evid 403
18.	Stolle RFP 0591-0642	Professional Standards Review January 2020	Hearsay, Relevance, No personal knowledge, Fed. R. Evid 403
19.	Stolle RFP 0680	Email 11-05-20	Hearsay, No personal knowledge, Relevance, Fed. R. Evid 403

Exhibit Number	Bates Stamp Number	Exhibit	Objection
20.	Stolle RFP 0681-0686	Email chain 12-04-20	Ms. Thomson's email at the top of the chain is objected to on the bases of Hearsay, Relevance, Fed. R. Evid 403
21.	Stolle RFP 0445-0458	Arrests	Relevance, Confuses the issues
22.	Stolle RFP 321-0324	Request for Transfer Email and attachment 01-10-19	None
23.	Stolle RFP 0692-0697	Memorandum Agreement between VBSO and VBPD	Relevance
24.	Stolle RFP 0698	Request to work extra duty	Relevance

The Defendant may use demonstrative exhibits.

Exhibit Number	Bates Stamp Number	Exhibit	Objection
25.	NSO SDT 010-012	Norfolk Sheriff Documents- (i.e. incomplete Application)	Relevance, Fed. R. Evid 493 Hearsay
26.	Fortis Title SDT 0116	Settlement Statement	Relevance Hearsay Fed. R. Evid 403
27.	P 000106 Withdrawn Attachment C - Recording	2018 Audio Recording	None
28.	Kelly Fowler SDT 010-013	Text messages between Stolle and Convirs-Fowler	None

IV. FACTUAL CONTENTIONS.

A. The factual contentions of the Plaintiff are:

1. Plaintiff hereby incorporates by reference all facts set forth in his Memorandum of Law in Support of Motion for Summary Judgment but specifically highlights the following for reference:

2. Plaintiff was a good employee achieving positive evaluations throughout his employment.

3. Despite his success, Plaintiff fell out of favor with the Sheriff because the Sheriff was politically opposed to Plaintiff and Plaintiff's wife's political stances and standing.

4. The Defendant, directly and through his command staff, discriminated against Plaintiff for his Speech and Association.

5. Sheriff Stolle told Plaintiff that Plaintiff could not remain employed by the VBSO if he won a seat on the City Council because to remain would be a clear conflict of interest.

6. Sheriff Stolle then permitted a Republican member of his staff to serve on the City Council despite the existence of the same factual circumstances that the Sheriff indicated would result in the Plaintiff having to resign from the VBSO.

7. Sheriff Stolle's stated reasons for ending Plaintiff's appointment changed multiple times between the actual notification that he would not re-appoint Plaintiff, in the press, and in litigation.

8. The reasons stated by Sheriff Stolle are pretexts for Speech or Association as motivating factors.

B. The factual contentions of the Defendant are:

1. Defendant hereby incorporates by reference all facts set forth in his Memorandum of Law in Support of Motion for Summary Judgment.

V. TRIABLE ISSUES.

A. The triable issues as contended by the Plaintiff are:

1. Whether Plaintiff's political association was a motivating factor in the Sheriff's decision to terminate Plaintiff's appointment, in violation Plaintiff's Federal or Virginia Constitutional Protections.

2. Whether Plaintiff's association with his wife was a motivating factor in the Sheriff's decision to terminate Plaintiff's appointment, in violation Plaintiff's Federal or Virginia Constitutional Protections.

3. Whether Plaintiff's political speech was a motivating factor in the Sheriff's decision to terminate Plaintiff's appointment, in violation Plaintiff's Federal or Virginia Constitutional Protections..

4. Whether the Defendant's stated reasons for terminating Plaintiff's appointment were contradictory, and if so, were the Sheriff's stated motivating factors pretextual.

B. The triable issues as contended by the Defendant are:

1. Whether Sheriff Stolle is entitled to qualified immunity because the law was not clearly established that his failure to reappoint plaintiff violated the First Amendment?

2. Whether Sheriff Stolle violated Plaintiff's federal or state constitutional right of free speech when he did not reappoint the Plaintiff as a deputy sheriff?

3. Whether Sheriff Stolle violated Plaintiff's federal or state constitutional right of association when he did not reappoint the Plaintiff as a deputy sheriff?

ENTERED this _____ day of September, 2023.

United States Magistrate Judge

We ask for this:

/s/

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